

APR 18 2006

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellant,

v.

KEITH JOHAN MENNEN,

Defendant - Appellee.

No. 05-30339

D.C. No. CR-04-00124-RHW

MEMORANDUM*

UNITED STATES OF AMERICA,

Plaintiff - Appellant,

v.

TREVOR FRANK HARRIS,

Defendant - Appellee.

No. 05-30353

D.C. No. CR-04-00125-1-RHW

Appeal from the United States District Court
for the Eastern District of Washington
Robert H. Whaley, U.S. District Judge, Presiding

Argued and Submitted April 7, 2006

*This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

Seattle, Washington

Before: CANBY, GOULD, and BEA, Circuit Judges.

The government appeals the 18-month sentences Keith Mennen and Trevor Harris (“Appellees”) received after their guilty plea convictions for conspiracy to possess with intent to distribute 100 kilograms or more of marijuana in violation of 21 U.S.C. §§ 841(a)(1) and 846. We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.¹

The government contends that the district court erred in holding Appellees accountable at sentencing for the amount of marijuana each man carried across the U.S.-Canada border rather than for the total amount of marijuana carried by all of the men with whom Appellees crossed the border. We disagree.² As an initial matter, the district court acted within its discretion in rejecting the stipulation in Appellees’ plea agreements that Appellees’ jointly undertaken involvement in the conspiracy involved 235.32 kilograms of marijuana. *See* U.S.S.G. § 6B1.4(d) (“The court is not bound by the stipulation, but may . . . determine the facts

¹Because the parties are familiar with the facts and procedural history, we do not restate them here except as necessary to explain our disposition.

²We review factual findings made during sentencing, including a determination of the quantity of drugs involved in an offense, for clear error. *United States v. Asagba*, 77 F.3d 324, 325 (9th Cir. 1996).

relevant to sentencing.”); *United States v. Howard*, 894 F.2d 1085, 1089 n.2 (9th Cir. 1990).

Further, the court did not err in finding that the conspiracies for which Mennen and Harris were convicted included only each man’s individual agreement to transport marijuana across the border. *See United States v. Palafox-Mazon*, 198 F.3d 1182, 1187 (9th Cir. 2000) (affirming the district court’s finding that defendants who were led across the U.S.-Mexico border carrying backpacks of marijuana were accountable at sentencing for only the amount of marijuana each man carried because the record did not show that the defendants “intended to, would have, or did in any way coordinate their importation efforts for their mutual assistance and protection or aid and abet each other’s actions.” (internal quotations and alterations omitted)); *see also* U.S.S.G. § 1B1.3 comment. n.2(c)(8).

Appellees were recruited individually, taken separately to a meeting point, and led across the border. They did not participate in the planning of the trip, and there is no evidence in the record that Mennen or Harris either coordinated their efforts with others for mutual protection or helped the other drug traffickers during the trips. The district court did not err in finding each of the Appellees was accountable at sentencing for only the amount of marijuana that he carried across the border.

AFFIRMED.